



County of Los Angeles CHIEF EXECUTIVE OFFICE

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Chief Executive Officer

April 19, 2010

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To: Supervisor Gloria Molina, Chair
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From: William T Fujioka
Chief Executive Officer

MOTION TO SUPPORT SB 346 (KEHOE AND SIMITIAN) IF AMENDED AND INSTRUCT THE CHIEF EXECUTIVE OFFICE TO IDENTIFY \$42,500 IN THE FISCAL YEAR 2010-11 BUDGET FOR THE BRAKE PAD PARTNERSHIP (ITEM 64-B – AGENDA OF APRIL 20, 2010)

Item 64-B on the April 20, 2010 Agenda is a motion by Supervisors Yaroslavsky and Ridley-Thomas that the Board of Supervisors support SB 346 (Kehoe and Simitian), if amended, to include provisions recommending that State and Federal water regulatory bodies revise the Total Maximum Daily Loads (TMDLs) compliance schedules for copper to match the schedule for elimination of copper brake pad materials in the bill; and instruct the Chief Executive Office to identify \$42,500 in Final Changes to the Fiscal Year 2010-11 Budget for the Brake Pad Partnership so the necessary collaboration can continue.

Summary

SB 346, as amended on June 24, 2009, in general would: 1) reduce the use of copper and other heavy metals in automobile brake friction materials starting in 2014, and effectively remove copper from brake pad materials by January 1, 2032; 2) impose specified requirements on manufacturers of vehicles and brake friction materials; 3) impose specified requirements on retailers of brake friction materials; and 4) provide for a \$1.00 fee on each new brake friction materials set sold in the State, whether fitted to a new vehicle or sold separately, to fund the various activities specified in the bill. This two-year bill has been in the Assembly Environmental Safety and Toxic Materials Committee since June 15, 2009, awaiting a hearing date.

Because there is no existing Board policy regarding: 1) a fee on brake friction materials; 2) the requirements imposed on manufacturers of vehicles and brake friction materials; 3) the requirements imposed on retailers of brake friction

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materials; and 4) the identification of financial resources for the Brake Pad Partnership, a position on SB 346 and the identification of resources for the Brake Pad Partnership are a matter for Board policy determination.

Background

Existing law, administered by the State Department of Toxic Substances Control (DTSC), prohibits the management of hazardous waste except in accordance with the hazardous waste control laws, including laws governing the removal of any mercury-containing vehicle light switch from a vehicle, and the regulations adopted by DTSC. A violation of the hazardous waste control laws is a crime.

By January 1, 2011, the DTSC is required to adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered a "chemical of concern", in accordance with a review process, as specified, and to adopt regulations to establish a process to evaluate chemicals of concern, and their potential alternatives, in consumer products in order to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern, as specified.

Current law prohibits the manufacture, processing, and distribution in products containing certain materials found to raise health risks, including lead, and requires the State Water Resources Control Board (SWRCB) and the State regional water quality control boards to regulate the discharge of stormwater in accordance with the Federal Clean Water Act and the Porter-Cologne Water Quality Control Act. The SWRCB has established TMDLs with allowable pollution limits on copper and other pollutants in several Southern California urban watersheds. Failure to comply with these TMDLs will result in serious penalties to the responsible jurisdictions. The presence of copper in the urban environment, and the technical difficulty and impracticality of treating stormwater to remove it, means that compliance with copper TMDLs will not be feasible without source reduction of copper.

According to the Senate Floor analysis of SB 346, the Brake Pad Partnership is a collaborative group of brake manufacturers, environmentalists, stormwater management entities, and regulators that originally came together to understand the impact on the environment of brake pad wear debris. In late 2007, the Partnership completed a series of interlinked laboratory, environmental monitoring, and environmental modeling studies that indicated that brake pads are a substantial contributor to copper in runoff to the San Francisco Bay. The outcome of these studies and the consensus-based approach of the Brake Pad Partnership led to the development of SB 346.

SB 346 Provisions

Specifically, SB 346 would require the DTSC to: 1) conduct a baseline survey of the concentration levels of nickel, zinc, copper, and antimony in motor vehicle brake friction materials, on or before January 1, 2013; 2) monitor the concentration levels of those metals in motor vehicle brake friction materials, beginning January 1, 2013, and at least every three years thereafter, to ensure that those levels do not increase by more than 50 percent above the baseline levels established through the baseline survey; 3) take

specified action with other State agencies to determine if there is a need to control the use of those materials if any of those metals increased by more than 50 percent; and 4) monitor copper.

SB 346 would also: 1) prohibit, after January 1, 2014, the sale of brake friction materials in the State that contain cadmium, chromium, lead, mercury and asbestiform fibers; 2) prohibit, after January 1, 2021, the sale of brake friction materials in the State that contain more than five percent copper by weight; 3) prohibit, after January 1, 2032, the sale of brake friction materials in the State that contain more than 0.5 percent copper by weight; and 4) require manufacturers of vehicles and brake friction materials to monitor and provide four reports at specified times to DTSC on their efforts to comply with the copper reduction mandate. The DTSC would be required to review the reports and, within six months of receipt, report the following to the Legislature: an overall summary of the results, statistics on certifications issued by third-party testing agencies for friction materials in compliance with any or all of the requirements, and a summary of the results of the monitoring of copper by DTSC.

After January 1, 2014, manufacturers of brake friction materials would be required to follow the process adopted by the DTSC regarding criteria to evaluate alternatives to copper in brake friction materials, and obtain third-party certification from a "testing agency", to be reviewed by the DTSC, to demonstrate compliance with the brake friction materials requirements established by SB 346. A testing agency means an agency approved by the DTSC as qualified and equipped for the testing of products, materials, equipment, and installations in accordance with nationally recognized standards.

By January 1, 2021, and until December 31, 2031, all brake friction materials manufacturers would be required to obtain certification from a third-party testing agency as to compliance with the prohibition against the sale of brake friction materials in the State that contain more than 5 percent copper by weight, effective January 1, 2021, and obtain compliance certification with the prohibition against the sale of all brake friction materials in the State that contain more than 0.5 percent copper by weight, effective January 1, 2032. Proof of certification is required to be marked on the friction materials. All certification and marking criteria required by the bill must be developed by DTSC, in consultation with all interested parties, on or before January 1, 2011.

Exempt from the brake friction materials requirements are: military combat vehicles, vehicles employing internal closed oil immersed brakes, or a similar brake system that is fully contained and emits no copper, other debris, or fluids under normal operating conditions, and brakes designed for the primary purpose of holding the vehicle stationary and not designed to be used while the vehicle is in motion.

Furthermore, the bill would: 1) require vehicle manufacturers and retailers of brake friction materials to ensure that only compliant brake friction materials are sold in the State; 2) establish a civil fine of up to \$10,000 per violation of the new article; 3) establish DTSC as the enforcing agency for the new article; 4) permit DTSC to remove non-compliant brake friction materials from sale in the State; 5) prohibit DTSC from recalling automobiles fitted with brake friction materials that do not comply with this bill; and 6) authorize DTSC to

impose fines and penalties on automobile manufacturers whose vehicles are fitted with brake friction materials in non-compliance with the bill.

Beginning on January 1, 2011, the DTSC is required to impose a fee of \$1.00 per axle set of brake friction materials sold in the State installed in a new vehicle or sold separately. Starting on January 1, 2012, and every year thereafter, the DTSC would be required to adjust the fee by an amount necessary to compensate for inflation. If DTSC determines, after January 1, 2016, that the average annual revenue from the fee is less than an amount equivalent to \$13 million in 2011 dollars, or more than an amount equivalent to \$16 million in 2011 dollars, SB 346 requires DTSC to adjust the fee to an amount necessary to fall within that range.

The fees collected would be deposited into the Brake Friction Materials Water Pollution Fund (Fund) in the State Treasury, which would be established by the bill. The use of the fee revenue is limited to cover costs for outreach, administration, fee collection, enforcement, monitoring, and control measures related to copper and other materials in brake friction materials, and for making grants to "qualified agencies" for the planning, implementing, and measuring the effectiveness of actions to improve water quality in surface waters that receive runoff containing pollutants for vehicle brake friction materials. Qualified agencies includes cities, counties, cities and counties, organizations representing municipalities on a watershed basis, and organizations representing co-permittees in a single National Pollutant Discharge Elimination System (NPDES) permit.

Not more than five percent of the fees collected can be used to offset accounting costs incurred for fee collection. Funds for outreach may be allocated by the DTSC to trade associations connected with the manufacture and sale of brake friction materials for outreach to, and education of, their memberships. The DTSC is required to consult with the SWRCB prior to allocating funds to, or implementing any provisions of the bill relating to, motor vehicle brake friction materials monitoring, mitigation, or control measures.

The moneys in the Fund are subject to appropriation by the Legislature in the annual Budget Act, in the manner and order of priority as follows:

- By the DTSC and SWRCB for implementing the bill, with no more than five percent for administration of grants to qualified entities;
- By the DTSC, 90 percent of the balance of moneys for grants to qualified entities on a per capita basis for planning, implementing and measuring the effectiveness of actions to improve water quality in surface waters that receive runoff containing pollutants from vehicle brake friction materials; and
- By the DTSC, the remaining 10 percent of the moneys in the fund, plus any moneys reserved for grants that have not been allocated, to be used to issue competitive grants to qualified entities (including nonprofit entities).

The DTSC would be required to consult with the SWRCB in adopting guidelines for the awarding and administration of grants provided from the Fund. The DTSC would also be

required to keep accurate books, records, and accounts of all its dealings under the bill, and all books, records, accounts, and amounts paid into or from the Fund are subject to an annual audit. SB 346 prohibits any funds from being spent on activities unrelated to the improvement of water quality in surface waters that receive runoff containing pollutants from vehicle brake friction materials.

Since SB 346 effectively removes copper from brake pad materials by January 1, 2032, the bill requires the DTSC to reduce the fee on brake friction materials, on January 1, 2040, to the amount necessary solely to provide sufficient revenue for the administration and implementation of the fee on brake friction materials and for reimbursement for administering grants to qualified agencies.

SB 346 Impact to the County

The Department of Public Works (DPW) indicates that most brake pads contain copper and other heavy metals and much of the copper dust worn off of brake pads is emitted into the air and is blown onto areas adjacent to the roadway, or is washed into the storm drains when it rains. Anything that gets into a storm drain ultimately flows into creeks, rivers and marine waters. In most parts of California storm drains flow directly to creeks, rivers, and marine waters without wastewater treatment.

Since much of the copper in stormwater runoff is in a dissolved form, the type of treatment technologies that are most commonly retrofitted into storm drain systems—drain inserts that remove trash and other solids—are not effective in removing it. DPW indicates while land-based stormwater runoff treatment systems like infiltration ponds and rain gardens are better at removing copper, widespread installation of these systems would be prohibitively expensive and could be disruptive to established communities, because these systems require significant amounts of land—and that land has to be located near storm drain outlets along creeks, rivers, and beaches. Given these facts, DPW states the best way to effectively reduce copper in the State's waters is to control its sources, which is the goal of SB 346.

The Department of Public Works indicates that the Los Angeles Regional Water Quality Control Board has adopted or plans to adopt TMDL regulations for metals that include copper. TMDL regulations are anticipated to be incorporated into the next Municipal Separate Storm Sewer Systems NPDES Permit for which the County of Los Angeles is a co-permittee. Statutory efforts that may effectively control sources of regulated pollutants that may be discharged as runoff from County unincorporated areas into regulated receiving waters are of direct benefit to the County. In addition, DPW states that the grants made available by the bill for planning, implementing, and measuring the effectiveness of actions to improve water quality in surface waters that receive runoff containing pollutants for vehicle brake friction materials will likely be accessible to the County.

The Department of Public Works supports the intent of SB 346 because copper is a metal constituent listed in current TMDL regulations and potential future TMDL regulations for which the County is responsible for compliance. SB 346, by potentially relieving the County from the potential costs associated with implementation efforts to comply with

TMDLs to address copper in stormwater runoff, effectively shifts the costs to the State, business sector, and consumers and allows the State to address remaining TMDL compliance costs with revenues generated by the proposed \$1.00 per-axle fee. DPW states this would enable the State to effectively control this significant source of toxic pollution in stormwater runoff and enable the County and the municipalities to substantially comply with TMDL regulations and save billions of dollars for the cost of stormwater treatment.

However, DPW indicates that SB 346 should be amended to include provisions recommending that State and Federal water regulatory bodies revise the TMDL compliance schedules for copper to match the schedule for elimination of copper brake pad materials in the bill.

Currently TMDLs for metals have been promulgated for the Ballona Creek, Los Angeles River, and the San Gabriel River watersheds. A metals TMDL has also been promulgated for the Los Cerritos Channel. The Environmental Protection Agency and the Regional Water Quality Control Board, Los Angeles Region, has promulgated a compliance schedule for the Ballona Creek and the Los Angeles River watersheds as shown below:

Ballona Creek	2012: reduce metals by 50% (dry weather), 25% (wet weather)	2014: reduce metals by 75% (dry weather)	2016: reduce metals 100% (dry weather), 50% (wet weather)	2021: reduce metals 100% (wet weather)
Los Angeles River	2012: reduce metals by 50% (dry weather), 25% (wet weather)	2020: reduce metals by 75% (dry weather)	2024: reduce metals 100% (dry weather), 50% (wet weather)	2028: reduce metals 100% (wet weather)

Based on this schedule the County would need to have treatment technologies installed and functioning by 2012. Therefore, DPW recommends that the County support SB 346, if amended, to include provisions recommending that State and Federal water regulatory bodies revise the metals TMDL compliance schedules to match the schedule for elimination of copper brake pad materials in the bill.

Support for SB 346 is consistent with existing Board policy to support: 1) proposals that promote a shared Federal, State and local funding formula to pay for implementation of the TMDL and other stormwater requirements; 2) funding to maintain clean beaches and improve the water quality of coastal waters, estuaries, bays and near shore waters; 3) proposals that protect and improve water quality; and 4) legislation that places greater emphasis on producer/manufacturer responsibility for the environmental impact of their products and the waste that is produced. However, there is no existing Board policy regarding: 1) a fee on brake friction materials; 2) the requirements imposed on manufacturers of vehicles and brake friction materials; and 3) the requirements imposed on retailers of brake friction materials. **Therefore, a position on SB 346 is a matter for Board policy determination.**

Support and Opposition

SB 346 is co-sponsored by the City of San Diego and Sustainable Conservation on behalf of the Brake Pad Partnership, and supported by numerous organizations, including: Ventura County Board of Supervisors; Alameda County Board of Supervisors; California State Association of Counties; League of California Cities; California Association of Sanitation Agencies; County Sanitation Districts of LA County (if amended); the Cities of: Arcadia, Bell, Bell Gardens, Cerritos, Downey, Lakewood, Long Beach, Lynwood, Montebello, Norwalk, Signal Hill, Simi Valley, Thousand Oaks, Ventura, and Whittier; City and County of San Francisco; California Stormwater Quality Association; Akebono Brake Corporation; Bay Area Stormwater Management Agencies Association; California Product Stewardship Council; Clean Water Action; Heal the Bay; Natural Resources Defense Council; Sierra Club California; Coastkeeper Alliance; Clean South Bay; and the United States Navy.

It is opposed by the Alliance of Automobile Manufacturers and Heavy Duty Manufacturers Association.

Status

SB 346 passed the Senate Environmental Quality on April 20, 2009, as amended, by a party-line vote of 5 to 2, passed the Senate Appropriations Committee on May 26, 2009, by a party-line vote of 8 to 5, and passed the Senate Floor on June 3, 2009, by a party-line vote of 22 to 16.

After reaching the Assembly, this measure was referred to the Assembly Environmental Safety and Toxic Materials (ES&TM) Committee on June 15, 2009, was amended on June 24, 2009, and set for hearing in the ES&TM Committee on June 25, 2009. The June 25, 2009 Committee hearing was canceled at the author's request and SB 346 has been awaiting a hearing since then. However, the authors do intend to renew their effort to pass SB 346 in the Assembly.

WTF:RA
EW:er

c: Executive Office, Board of Supervisors
County Counsel